United States Court of Appeals

for the Second Circuit

APPELLANT'S SUPPLEMENTAL BRIEF

ORIGINAL

76-6049-50-59

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

CITY OF HARTFORD, on behalf of itself and its inhabitants, Richard Brown, Nicholas R. Carbone, John Cunnane, William A. DiBella, Allyn A. Martin, Richard Suisman, Margaret V. Tedone and Olga W. Thompson in their official capacity, Miriam Jordan and Fannie Mauldin,

Plaintiffs-Appellees,

vs.

The TOWNS OF GLASTONBURY, WEST HARTFORD and EAST HARTFORD,

Defendants-Appellants,

and

CARLA A. HILLS, in her capacity as Secretary of the Department of Housing and Urban Development; HAROLD G. THOMPSON, in his capacity as Acting Regional Administrator of the Department of Housing & Urban Development; LAWRENCE THOMPSON, in his capacity as District Director of the Department of Housing and Urban Development; and THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and the Towns of FARMINGTON, WINDSOR LOCKS, VERNON, and ENFIELD,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL BRIEF OF APPELLANT TOWN OF EAST HARTFORD

JAMES A. WADE
ROBINSON, ROBINSON & COLE
Attorney for Defendant-Appellant
Town of East Hartford
799 Main Street
Hartford, Connecticut 06103

TABLE OF CONTENTS

	PAGE
Statement of the Issues	1
Incorporation of Other Briefs	1
The Majority Opinion Fails to Give Legal or Factual Credence to the "Expected to Reside" Figure Filed by the Town of East Hartford	1
Questions Presented by the Court	3
Conclusion	5

STATUTE CITED

42 U.S.C. § 5304(f)	3

SUPPLEMENTAL BRIEF OF APPELLANT TOWN OF EAST HARTFORD

Statement of the Issues

1. Appellant, Town of East Hartford, adopts the Statement of the Issue contained in the Supplemental Brief of the Appellants, Glastonbury and West Hartford, and incorporates the same as though fully set forth herein.

2. Did the majority of the panel err in holding that East Hartford's "expected to reside" figure had not been adequately verified and therefore was not a proper basis for approving its grant application?

Incorporation of Other Briefs

As was noted in East Hartford's initial brief on file with this Court, there are issues in this appeal that are common to all three Appellants. However, because East Hartford, alone among the seven area towns named as parties defendant in the District Court, included an "expected to reside" figure in its grant application other than zero, there is a separate question of law that relates to it. Consequently, this Appellant adopts as its own the arguments raised by the Towns of Glastonbury and West Hartford in their main brief and in their supplemental brief. In addition, East Hartford reasserts the arguments made by it in its main brief and submits the following additional argument for consideration by this Court.

The Majority Opinion Fails to Give Legal or Factual Credence to the "Expected to Reside" Figure Filed by the Town of East Hartford

Throughout this action, the Town of East Hartford has consistently maintained that it has fulfilled all of the re-

quirements of the Department of Housing and Urban Development in applying for its community development grant, that neither the plaintiffs, the District Court nor the majority of the panel of this Court has ever found fault with the merits of East Hartford's application including its "expected to reside" figure and that its grant should be paid to it in accordance with its application. In return for acting in a responsible and timely fashion, in obedience of the statutory mandate, East Hartford now finds itself ensnarled in litigation with its funds tied up by the City of Hartford, who itself merrily received its grant based upon an application which bore the very "expected to reside" figure—zero—which has now been found to be the sin of the other suburban towns. If it were not for the substantial property interests involved, one would believe this scenario to have been hatched from the pages of *Catch-22* rather than real life.

It is by now abundantly clear that East Hartford's "expected to reside" figure has never been challenged or held to be incorrect. The plaintiffs offered no evidence that any figure other than 131 was more appropriate. The District Court acknowledged that the Town did not "invent" the figure and that HUD's review of same was not entirely passive. (Memorandum of Decision, p. 37). The majority opinion goes so far as to hold that it would have been beyond the authority of the District Court to assess the correctness of East Hartford's figure. (Slip Opinion, p. 1104). What is challenged is the *method* by which the figure was obtained, not the figure itself.

In the face of East Hartford's assertion of the efficacy of its "expected to reside" figure, if the figure is invalid who should have the burden of proving that to be so? In this case, the Secretary said that East Hartford's figure was too *high* and reduced it from 135 to 131. The plaintiffs, regardless of whether or not they had standing, chose to offer *no* evidence attacking the figure. They chose instead to question the method by which it was obtained.

It is difficult to find support in the record for the majority's claim that "it is clear that a substantial amount of data was available to the towns". (Slip Opinion, p. 1102). If anything, the record shows that there was a paucity of data. If there were such data available which would have proven the inaccuracy of East Hartford's figure, why was it never offered in evidence? East Hartford finds itself in the role of defending a figure which no one has attacked and which no one claims is wrong yet which is somehow held to be an inadequate basis to support its application. Somehow this seems to fly in the face of the legislative mandate which requires that a grant application be *automatically* approved if the Secretary does *nothing* with it for 75 days. (See, 42 U.S.C. § 5304(f)).

When one couples the affirmative bias of the statute in favor of approval with the presumption of regularity which attaches to the acts of administrators absent clear proof to the contrary, the action of East Hartford in preparing its application appears sound. However, it appears that the majority opinion establishes a new rule of law governing the conduct of town administrators. In effect, the majority says to East Hartford, notwithstanding your good faith and timely application and regardless of the fact that no one has claimed or proven that your "expected to reside" figure is incorrect, since the method of arriving at that figure does not measure up to an undefined standard, your application for community development funds must be rejected. It is respectfully submitted that if such a rule of law is permitted to stand, municipal administrators will be at sea in attempting to justify their grant applications.

Questions Presented by the Court

The Court has posed the following three questions:

1. Whether in fact the towns have satisfied the expected to reside requirement for the year in question, fiscal year 1975.

2. If so, have they reapplied to the lower court for modification of the decree as set forth at the end of the panel majority's opinion.

3. If not, what has happened to the funds?

In light of the comment at the end of the panel majority opinion relating to possible mootness, the Town of East Hartford presumes that Question 1 is not directed to it. Since its "expected to reside" figure in its original application was accurate and has never been shown to be inaccurate, East Hartford saw no need to and did not revise its original application. Since HUD revised the original figure of 135 units downward to 131 units and since neither the plaintiffs nor the District Court took issue with the validity of that number, East Hartford must conclude that it has satisfied the expected to reside requirement.

In view of the fact that its "expected to reside" figure is sound, East Hartford has not reapplied to the lower court for modification of its decree. Moreover, since East Hartford feels strongly that neither a neighboring town nor its residents who have no connection or interest in East Hartford can dictate the method by which its block grants can be utilized, it is believed that the District Court's judgment was incorrect and that it would be inappropriate to seek modification thereof.

With regard to the location of the funds at this time, to the information and belief of this Appellant they remain with the Department of the Treasury. No order to reallocate the funds or to permit them to lapse has been issued. It is anticipated that if this Court orders that the injunction barring East Hartford from drawing on the Treasury its entitlement funds be dissolved, payment of same will be made.

Conclusion

East Hartford agrees with the Towns of Glastonbury and West Hartford that standing to sue is a central issue in this appeal. However, it is not the only issue insofar as East Hartford is concerned. This Appellant approaches this Court from a separate perspective in view of the actions taken by it at the outset and its consistent position that it has done everything lawfully required of it to conform to the statutory criteria for obtaining community development funds. As a result, this Court should treat East Hartford separately in view of the legal issues presented by it.

It is respectfully submitted that this Court, upon reconsideration, should adopt the logic of the minority opinion, that the judgment of the District Court enjoining East Hartford from drawing upon the Treasury of the United States or spending in any fashion the entitlement funds granted to it pursuant to Title I of the Housing and Community Development Act of 1974 should be set aside and that judgment should enter in favor of this Appellant.

APPELLANT, Town of East
Hartford, Connecticut

By JAMES A. WADE
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103
Its Attorney

(61126)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CITY OF HARTFORD, et al.,

Plaintiffs-Appellees,

vs.

The TOWNS OF GLASTONBURY, WEST HARTFORD and EAST HARTFORD,

Defendants-Appellants,

and

CARLA A. HILLS, et al.,

Defendants.

State of New York,
County of New York,
City of New York—ss.:

IRVING LIGHTMAN being duly sworn, deposes and says that he is over the age of 18 years. That on the 28th day of February, 1977, he served two copies of the Supplemental Brief of the Town of East Hartford on See attached list

the attorneys for the see attached list by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorneys at No. See attached list ( ) N. Y., that being the address designated by them for that purpose upon the preceding papers in this action.

Irving Lightman

Sworn to before me this
28th day of February, 1977.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920

Mary R. Hennessey
Attorney for Plaintiffs-Appellees
Mauldin and Jordan
75 Elm Street
Hartford, Connecticut 06103

Barry S. Zitser
Attorney for Plaintiff-Appellee
City of Hartford
550 Main Street
Hartford, Connecticut 06106

Due and timely service of TWO copies
of the within BRIEF is hereby
admitted this 1st day of MARCH 1977

Richard J. Burke

.....
Attorney for APPELLEE